

1 Rica C. Angelo, Pro se,
2 8245 Opera Dr.
3 Las Vegas, NV 89146,
4 (702) 396-1527

FILED
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CLERK US DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY DEPUTY

7 **IN THE UNITED STATES DISTRICT COURT**
8 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

'08 CV 1253 W JMA

11 RICA C. ANGELO,)
12 Plaintiff,)
13 vs.) CASE NO.

14 COUNTRYWIDE HOME LOANS,
15 COUNTRYWIDE BANK, FSB;
16 RECONTRUST COMPANY;)
17 AURORA LOAN SERVICES)
18 Defendants,) **VERIFIED COMPLAINT**

20 **VERIFIED COMPLAINT**

23 COMES NOW the Plaintiff, RICA C. ANGELO, pro-se, and sues
24 Defendant COUNTRYWIDE BANK (hereinafter
25 "Countrywide"), Countrywide Home Loans, RECONTRUST Company and
26 AURORA LOAN SERVICES,. (Hereinafter "Aurora Loan"), Defendants,
27 and as grounds therefore would state as follows:

28 **PRELIMINARY STATEMENT**

1.

1. This Complaint is filed under the Truth in Lending Act, 15 U.S.C. section 1601 hereinafter called the "Act") to enforce Plaintiff's right to rescind a consumer credit transaction, to void the Defendant's security interest in the Plaintiff's home, and to recover statutory damages, reasonable fees and costs by reason of the Defendant's violations of the Act and Regulation Z, 12 C.F.R. section 226 (hereinafter called "Regulation Z"). Plaintiff also seeks damages for Defendant's violation of state law.

JURISDICTION

2.

Jurisdiction within this court is predicated upon various Federal questions arising under the United States Code including but not limited to 15 USCA § 1640 et seq. Commonly known as the Truth in Lending Act (TILA): 12 USCA § 2605 the Real Estate Settlement Procedures Act (RESPA) and 15 USCA § 1602 et seq. commonly known as the Homeowners Equity Protection Act, as well as 15 USCA § 1692 Commonly known as the Fair Debt Collection Practices Act, and 28 U.S.C. sections 1331, 1337. The Court has authority to issue a declaratory judgment by virtue of 28 U.S.C. section 2201.

PARTIES

3.

1 The Plaintiff, RICA C. ANGELO, is a natural person and
2 owner or the property located at, 1970 Columbia St., #315, San
3 Diego, California 92101.

4 4.

5
6 Defendant Countrywide and Recontrust Company are
7 corporations engaged in the business of mortgage financing and
8 doing business in San Diego, County, California.

9 5.

10 Defendant Aurora Loans, is a corporation engaged in the
11 business of servicing mortgage loans and doing business in San
12 Diego County, California.

13 6.

14 At all times material hereto, the Defendants, in the
15 ordinary course of their business, regularly extended, or
16 offered to extend, consumer credit, for which a finance charge
17 is or may be imposed or which, by written agreement, is payable
18 in more than four installments.

19 **FACTUAL ALLEGATIONS**

20 7.

21 On or about April 03, 2007, Plaintiff entered into a
22 consumer credit transaction ("the transaction") with Defendants
23 in which the extended consumer credit was subject to a finance
24 charge and which was initially payable to the Defendants.

25
26 8.

27 A true and correct copy of the Deed of Trust evidencing
28

1 the transaction is attached hereto, marked as PLAINTIFF'S
2 EXHIBIT A, and by reference is incorporated herein.

3 9.

4 As part of this consumer credit transaction, the Defendants
5 retained a security interest in 1970 Columbia St., #315, San
6 Diego, California, 92101, which Plaintiff owns.

7
8 10.

9 The security interest was not created to finance the
10 acquisition or initial construction of Plaintiff's property but
11 was a refinance.

12 **FIRST CAUSE OF ACTION**

13 11.

14 This consumer credit transaction was subject to the
15 Plaintiff's right of rescission as described by 15 U.S.C.
16 section 1635 and Regulation Z, 12 C.F.R. section 226.23.

17 12.

18 In the course of the consumer credit transaction Defendants
19 violated 15 U.S.C. Section 1635 (a) and Regulation Z section
20 226.23 (b) by failing to deliver to the Plaintiffs two copies of
21 a notice of the right to rescind that:

- 22
- 23 a. Identified the transaction.
 - 24 b. Clearly and conspicuously disclosed the security
25 interest in the Plaintiff's property.
 - 26 c. Clearly and conspicuously disclosed the Plaintiff's
27 right to rescind the transaction.
 - 28 d. Clearly and conspicuously disclosed how to exercise
the right to rescind the transaction, with a form
for that purpose designating the address of
Defendant's place of business.

- e. Clearly and conspicuously disclosed the effects of the transaction.
 - f. Clearly and conspicuously disclosed the date the rescission period expired.
 - g. The Notice of the Right to Cancel was dated and no new or updated Notice was given prior to the re-scheduled closing which occurred April 03, 2007, and which by law Plaintiff had a right to rescind within three days after the re-scheduled closing date of April 03, 2007. As such a proper Notice of Right to Cancel was never given.
- Attached as Plaintiff's Exhibit "B" is a copy of the Notice of Right to Cancel dated, 2007.

13.

The disclosure statement issued in conjunction with this consumer credit transaction violated the requirements of Truth in Lending and Regulation Z in the following and other respects:

- a. By failing to include in the finance charge certain charges imposed by the Defendant payable by Plaintiff incident to the extension of credit as required by 15 U.S.C. section 1605 and Regulation Z, section 226.4, thus improperly disclosing the finance charge in violation of 15 USC section 1638 (a) (3) and Regulation Z section 226.18 (d). Such amounts include, but are not limited to
 - i. The broker fee.
 - ii. The credit report fee, which is not a bona fide and reasonable fee.
 - iii. The recording fees in excess of the actual recording fee which are therefore not a "bona fide and reasonable" fee.
 - iv. The settlement or Closing fee.
- b. By improperly including certain charges, in the amount financed, which are finance charges, including but not limited to those itemized in Paragraph 12 (a) herein, the Defendant improperly disclosed the amount financed in violation of 15 U.S.C. section 1638 (a) (2) and Regulation Z, section 226.18 (b); and

1 c. By calculating the annual percentage rate (APR)
2 based upon improperly calculated and disclosed
3 finance charges and amount financed, 15 U.S.C.
4 section 1606, Regulation Z, section 226.22, the
5 Defendant understated the disclosed annual
percentage rate in violation of 15 U.S.C. section
1638 (a) (4) and Regulation Z, section 226.18 (c).

17.

6 The disclosures improperly made by Defendants as itemized
7 in paragraph 13 are material disclosures as defined in the Truth
8 in Lending Act, 15 U.S.C. section 1602 (u), Regulation Z 226.23
9 n. 48.

14.

11 The finance charge and APR were under-disclosed by more
12 that the tolerance levels set forth in U.S.C. section 1635 (f).

15.

14 By reason of the material violations of 15 U.S.C. section
15 1638, Plaintiff has a right of rescission for three years from
16 the date of consummation of the loan pursuant to U.S.C. (f).

16.

18 Plaintiffs rescinded the transaction by sending to
19 Defendants at their business address by mail a notice of
20 rescission.

17.

22 More than 20 calendar days have passed and Defendants have
23 failed to take any action necessary or appropriate to reflect
24 the termination of any security interest created under this
25 transaction, including the security interest describe as
26 required by 15 U.S.C. section 1635 (b) and Regulation Z section
27 226.23 (d) (2).

18.

1 The Defendants have failed to return to the Plaintiffs any
2 money or property given by the Plaintiff to anyone, including
3 the Defendants, as required by 15 U.S.C. 1635 (b) and Regulation
4 Z 226.23 (d) (2).

5 19.

6 As a result of the aforesaid violations of the Act and
7 Regulation Z, pursuant to 15 U.S.C. sections 1635 (a), 1640 (a),
8 and 1641 (c), Defendants are liable to Plaintiff for:

- 9
- 10 a. Rescission of this transaction.
 - 11 b. Termination of any security interest in
Plaintiff's property created under the
transaction
 - 12 c. Return of any money or property given by the
Plaintiff to anyone including the Defendant,
13 in connection with this transaction.
 - 14 d. Statutory damages for disclosure violations.
 - 15 e. Statutory damages for failure to respond
properly to Plaintiff's rescission notice.
 - 16 f. Forfeiture of return of loan proceeds.
 - 17 g. Actual damages in an account to be
determined at trial.
 - 18 h. Costs of this action.

19 **PRAYER FOR RELIEF**

20 WHEREFORE, it is respectfully prayed that this Court:

- 21 1. Assume jurisdiction of this case.
- 22 2. Declare the security interest in Plaintiff's property
void.
- 23 3. Rescind the subject loan transaction.
- 24 4. Order Defendants to take all action necessary to
terminate any security interest in Plaintiff's property
created under the transaction and that the Court declare
25 all such security interest void, including but not
26 limited to the mortgage related to the subject
transaction.
- 27 5. Order the return to the Plaintiff of any money or
property given by the Plaintiff to anyone, including
28 Defendants, in connection with the transaction.

6. Enjoin Defendants, during the pendency of this action, and permanently thereafter, from instituting, prosecuting, or maintaining foreclosure proceedings on the Plaintiff's property, from recording any deeds or mortgages regarding the property or from otherwise taking any steps to deprive Plaintiff of ownership of the property.
7. Award the Plaintiff statutory damages for the disclosure violation, in the amount of twice the finance charge in connection with this transaction, but not less than \$200 or more than \$2,000 as provided under 15 U.S.C. section 1640 (a).;
8. Award the Plaintiff statutory damages for Defendant's failure to respond properly to the Plaintiff's rescission notice, in the amount of twice the finance charge in connection with this transaction, but not less than \$200 or more than \$2,000 as provided under 15 U.S.C. 1640 (a).
9. Order that, because of Defendant's failure to respond to the Plaintiff's notice of rescission, the Plaintiff has no duty to tender, but in the alternative, if tender is required, determine the amount of the tender obligation in light of all of the Plaintiff's claims, and order the Defendant to accept tender on reasonable terms and over a reasonable period of time;
10. Award actual damages in an amount to be established at trial;
11. Award Plaintiff costs
12. Award such other and further relief as the Court deems just and proper.

VERIFICATION

Plaintiff/Affiant declares that she has read the foregoing Verified Complaint and under penalty of perjury that the foregoing facts and allegations as contained therein are true and correct.

Rica C. Angelo

Rica C. Angelo, Plaintiff
Pro Se
8245 Opera Dr.
Las Vegas, NV 89146

JS 44 (Rev. 11/04)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Rica C. Angelo PRO-SE

(b) County of Residence of First Listed Plaintiff San Diego
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

PRO-SE Rica Angelo
8245 Opera Dr. Las Vegas, NV 89146 (702) 809-7073

DEFENDANTS

Countrywide Home Loans Company, FSB, Reconstruct
Company, Aurora Loan Services

County of Los Angeles
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE

BY LAND INVOLVED DEPUTY

Attorneys (If Known)

08 CV 1253 W JMA

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☒ 3 Federal Question (U.S. Government Not a Party)
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State ☒ 1 ☐ 2 ☐ 3
Citizen of Another State ☐ 2 ☐ 2 ☐ 3
Citizen or Subject of a Foreign Country ☐ 3 ☐ 3
Incorporated or Principal Place of Business In This State ☐ 1 ☐ 4
Incorporated and Principal Place of Business In Another State ☐ 2 ☐ 5
Foreign Nation ☐ 3 ☐ 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input checked="" type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

15 USC 1601 ET SEQ

Brief description of cause:
TILA VIOLATIONS

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

Rica C. Angelo

FOR OFFICE USE ONLY

RECEIPT #

152936

AMOUNT

\$350.00

APPLYING IFP

JUDGE

MAG. JUDGE

MB 07/11/08

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44**Authority For Civil Cover Sheet**

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553
Brief Description: Unauthorized reception of cable service

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

**UNITED STATES
DISTRICT COURT**
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION

152936 - MB

July 11, 2008
15:35:06

Civ Fil Non-Pris

USAO #: 08CV1253 CIVIL FILING

Judge.: THOMAS J WHELAN

Amount.: \$350.00 CC

Total-> \$350.00

FROM: RICA C ANGELO PRO-SE VS
COUNTRYWIDE HOME LOANS, ET AL